

REMARKS

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claim Amendments

Claim 1 has been amended to incorporate the limitations of claim 2, as a result of which claim 2 has been cancelled, without prejudice or disclaimer.

No new matter has been added to this application by these amendments.

Consideration After Final Rejection

Although this Amendment is presented after final rejection, the Examiner is respectfully requested to enter the amendments and consider the remarks, as they place the application in condition for allowance.

Patentability Arguments

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Rejection Under 35 U.S.C. § 103(a)

The rejection of claims 1-6 under 35 U.S.C. § 103(a) as being unpatentable over Hunter (U.S. 3,749,588) is respectfully traversed.

The Examiner's position has been previously made of record. Additionally, in response to Applicants' previous arguments, the Examiner asserts that the phrase "having a solubility of 80% or more at pH 3.0 to 4.5" does not require that the protein be soluble over the entire range of pH 3.0 to 4.5.

Applicants respectfully disagree with the Examiner's position for the following reasons.

Initially, as discussed above, claim 1 has been amended to require that the acid-soluble

protein has a solubility of 90% or more at pH 4.5 or lower. The phrase, “a solubility of 90% or more at pH 4.5 to lower” means that the solubility is 90% or more over the entire range of pH 4.5 and lower, including a pH of 3.0.

Additionally, the Examiner states that the acid-soluble protein added to the jelly in Hunter would be expected to be entirely soluble at pH 3, as the insoluble protein would not be added. (Please see page 3, lines 1-3 of the Official Action.) However, contrary to the Examiner’s assumption, the acid-soluble protein used in Hunter is a conventional soybean protein isolate, and its solubility is 67% at a pH of 3.0 before removal of insoluble materials. (Please see column 3, line 20 of the reference.) This is clearly distinguished from the acid-soluble protein recited in Applicants’ amended claim 1, which requires a soybean protein having a solubility of 90% or more at a pH of 4.5 or lower.

Hunter merely teaches the production of a food mainly composed of a pectin gel and a conventional soybean protein. Furthermore, as seen from page 3, item 8 of the Official Action, the Examiner recognizes that Hunter teaches avoiding heating (i.e., heating the solution without the protein, then cooling before the addition of the protein), so that the protein is not denatured. This disclosure clearly teaches away from Applicants’ claimed process, which requires heating a solution of an acid-soluble soybean protein. MPEP 2141.02(VI) states that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” Thus, the Examiner is respectfully requested to reconsider his disregard for the passage of Hunter which clearly teaches away from heating the protein.

For these reasons, the invention of claims 1-6 is clearly patentable over Hunter. Withdrawal of this rejection is respectfully requested.

Double Patenting Rejection

The provisional rejection of claim 1 for obviousness-type double patenting as being unpatentable over claim 7 of co-pending Application No. 10/585,661 has been overcome by the filing of a Terminal Disclaimer, together with the required fee. Applicants submit the Terminal Disclaimer for the sole purpose of expediting prosecution, and do not acquiesce to the rejection. Withdrawal of this rejection is respectfully requested.

Conclusion

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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